

Food Handler Certification Rule

Frequently Asked Questions Regarding 410 IAC 7-22

The following questions and answers are based on current knowledge and are subject to change upon notification from the Indiana State Department of Health.

Q #1: Which exams are allowable under the new food handler certification rule?

A: *The Rule is examination based and does not include a training requirement. The Conference for Food Protection (CFP) has contracted with the American National Standards Institute (ANSI) to review and approve programs and examinations. The Rule requires the passage of an examination approved by ANSI. At this time, there are three (3) organizations that have applied for and received certification using the new ANSI process, and they are follows: (other organizations offer these exams on behalf of these organizations, so visit <http://www.in.gov/isdh/regsvcs/foodprot/foodhandler/certificationrule.htm> for the most updated list of providers)*

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Q #2: When EXACTLY does each food establishment have to have one certified food handler in place at their establishment?

A: *Food establishments have until December 31, 2004 to have one certified food handler in their employment.*

Q #3: What if, upon inspection at an establishment, it is noted that the certification held by the designated food handler is not one that is ANSI approved as mentioned above? In other words, what if they don't hold a valid certification?

A: *It would be noted on the inspection report as a violation of 410 IAC 7-22. It would be up to each individual local health department as to what timeframe for correction is given to the establishment. Penalties, if assessed, must be assessed in accordance with 410 IAC 7-22-19.*

Q #4: After December 31, 2004, do the requirements for a "person-in-charge" still apply?

A: *Yes. Establishments are still required to have a person-in-charge on-site at all times. Keep in mind, the person-in-charge and the certified food handler may be two separate people.*

Q #5: Does there have to be a certified food handler on-site at each establishment at all times?

A: *No. There just has to be one certified food handler employed at each establishment. There does, however, have to be a certified food handler responsible for all periods of the food establishment's operation.*

Q #6: Can the same person be employed by more than one food establishment – and be designated as the certified food handler for more than one food establishment?

A: *No. The same person cannot be designated as the certified food handler for more than one food establishment – except for the provisions set forth with regard to “contiguous properties”.*

Q #7: Using the example of a school corporation, if there is a “kitchen coordinator” within the corporation and that person is certified, is this sufficient for the whole corporation or must there be a certified food handler employed at EACH school?

A: *The same person cannot be designated as the certified food handler for more than one food establishment (even within the same corporation) – except for the provisions set forth with regard to “contiguous properties”. There would need to be a certified food handler employed at each school location, unless exempted from the Certification Rule by menu (such as some satellite facilities).*

Q #8: Does the Rule apply to Temporary and Mobile Food Establishments?

A: *Yes, unless exempted from the Certification Rule by menu.*

Q #9: If a Temporary Food Establishment vendor has more than one unit/trailer at the same event, are they required to have a certified food handler for each unit/trailer?

A: *Due to Section 15(e) of the Rule regarding establishments located on “the same property or on contiguous properties”, only one certified food handler is required at each event regardless of the number of actual units/trailers the vendor operates. If, however, they operate in two separate events on different properties on the same day, they must have two separate certified food handlers responsible for the two separate operations.*

Q #10: Does the Rule apply to not-for-profit organizations serving food?

A: *Yes. Not-for-profit organizations that operate food establishments are only exempt from the Certification Rule by menu (i.e.; if they only serve food items listed in the exemptions).*

Q #11: Does the Rule apply to Assisted Living Facilities?

A: *No. They are exempt.*

Q #12: Does the Rule apply to Aging and In-Home Services (or facilities similar to that which are mainly food “service” organizations – not really food “preparation”). In other words – if food is prepared at a central commissary and merely opened and served at the “site” – do they have to comply with the Rule?

A: *If the food is prepared at a central commissary (which would need to be in compliance with the certification requirements), and served in its pre-packaged form at the “sites”, they would be exempt from the certification requirements. If, however, they open the food prior to serving it, they would not be exempt (unless the menu items themselves are listed in the exemptions).*

Q #13: What if an establishment does not have any documentation as to the certified food handler's identity, proof of certification, etc.?

A: *Section 18 of 410 IAC 7-22 addresses the penalties that may be assessed for such a violation as it is the responsibility of the certified food handler to provide the certificate, letter, or document for verification of passing the examination.*

Q #14: Are the penalties stated in Section 18 of 410 IAC 7-22 assessable to the owner, operator, or person-in-charge of the establishment found in violation?

A: *These penalties, as with most all penalties assessed to food establishments, are assessable to the legal owner of the facility. In the case of an incorporated entity, the penalties are usually assessed to the legally named corporate officer(s). These penalties are not meant to be assessed to an employee.*

Q #15: What if the establishment is just opening or if it changes ownership? How long do they have to come into compliance and have a certified food handler in their employment?

A: *In either of those circumstances, they have 6 months to come in to compliance with the rule. (See "NOTE" in the answer below for an explanation on the length of time given for compliance.)*

Q #16: What if the certified food handler leaves the establishment – and there are no other food handlers who are certified at the establishment? How long do they have to come into compliance and have a certified food handler in their employment?

A: *The establishment has 3 months to come in to compliance with the rule. (This applies to Temporary Establishments as well. This, however, will be difficult to enforce as they are, in most cases, transient between counties. This will require some discussion to determine the best method for compliance and information sharing between counties. We will update the answer to this question when a better method is in place.)*

NOTE: Food establishments changing ownership or just beginning operation are given a bit more time to come into compliance than food establishments whose certified food handler terminates employment because it will normally take a new facility (or one under new ownership) a bit longer to facilitate themselves with applicable food regulations and it is more feasible that they might need a longer period of time to sign up and prepare for an examination. Whereas, an already-operating food establishment is more likely to be able to simply designate another employee to become certified.

Q #17: What if the establishment's certified food handler terminates employment with the facility (leaving the establishment without a certified food handler for up to 3 months in accordance with the rule) --- then the establishment gets another food handler certified who leaves after a short while, etc., and on and on --- when does this become a pattern of continuous 3 month intervals of establishments without certified food handlers? How do we avoid abuse of the rule of coming back into compliance when the certified food handler leaves employment?

A: You would have to use the normal methods of enforcement (such as for willful non-compliance, or repeat violations, etc.) that you have in your local Ordinance. You can also use the penalties in the Certification Rule.

Q #18: Are inspectors supposed to check frequently for compliance with the certification rule or just during routine inspections?

A: *For practical reasons, it is reasonable to assume that inspectors will only check for compliance with the certification rule during regular inspections or complaint investigations, but may check at any reasonable time.*

Q #19: Under Section 15(g), it states (among the other exemptions) that establishments only involved in “heating when it is the only step for a bakery product” are exempt from the certification requirement. Is “baking” considered “heating”?

A: *With respect to this particular exemption, baking is not the same as heating. Therefore, if an establishment is “baking” something -- they are not exempt from the Certification Rule.*

Q #20: Are Bed and Breakfast establishments required to meet the certification requirements?

A: *No. Bed and Breakfast facilities are not considered Retail Food Establishments, so they are exempt under the Certification Rule.*

Q #21: Once certified, how often will each certified food handler have to “renew” their certification?

A: *Depending on the exam they choose, they’ll have to renew their certification at the interval set forth by that testing organization. In general, MOST are renewable every five years – due to the ongoing changes in the science of food protection; however, none can exceed five years.*

Q #22: How will local health departments keep track of the certified food handlers employed by each food establishment?

A: *As the enforcement of the certification requirements and tracking mechanism will be up to each local health department, the following are merely suggestions to promote consistency throughout the state. **It is also important to realize that due to the transient nature of employees in the food industry, maintaining a current listing of certified food handlers per establishment will be extremely difficult. We can only do our best to update the information as it is made available to us – or as we request it.** The following ideas could be used for monitoring and tracking the certified food handlers identified by each food establishment by a local health department:*

- 1. A question could be added to the permit application where the establishment must identify the name of and position held by their certified food handler. If not already in place, a database could be created to ensure that multiple food establishments are not being represented by the same certified food handler.*
- 2. A note could be made on the inspection report during routine inspections of whom the establishment identifies as their certified food handler. Again, this could be put into a database for tracking and updating the information provided on the yearly application.*
- 3. A copy could be requested from each establishment of the document [required in Section 15(c)] that proves their employee successfully passed an approved examination. This copy could be put into the establishment’s file and updated as necessary. If there is a question of whether someone is actually employed by the establishment, employment records or timecards could be requested for verification.*

4. *At some point in the future, it may be beneficial to look into some sort of statewide, interactive, web-based database for reference and enforcement. The Indiana State Department of Health's "FIRMS" computer program is also designed to help track this and could be utilized at some point in the future.*

Q #23: Does the certification or certificate need to be posted in a conspicuous location (i.e.; next to the local permit)?

A: *There are no requirements stated in 410 IAC 7-22 with regard to the posting of the certificate or documents of proof.*

Q #24: If the employer pays for the certification of the individual, can the employer refuse to give the individual employee the certificate they received for training should the employee terminate employment with that establishment?

A: *That is a legal question and one that would have to be dealt with between the establishment, the employee, and possibly an attorney as they see fit. As for the potential for ghost employment – refer to the above list of “ideas” for verifying employment.*

Q #25: Could it be worked out that whomever conducts certification be requested to send a copy of the certificate (or a list) to the local health department to assist in keeping track of certified food handlers?

A: *Although this arrangement would be extremely helpful to the local health department, it will probably be very labor intensive for those offering the exams for the following reasons: (1) many times there are multiple counties represented in one sitting of an exam making recordkeeping, copying and mailing a hardship on those entities; (2) the cost of copying, mailing, etc. would need to be absorbed by the entity offering the exam; (3) normally it isn't a requirement to determine the county in which the examinee works in [merely where they live] – therefore, making it difficult for the entity offering the exam to know which county health department to inform.*

*This **request** could be made by any local health department to entities offering the exams – but it would need to be voluntary at this point.*

Q #26: Can a local health department deny the issuance of a permit/renewal based on the fact that the establishment cannot produce proof that they employ a certified food handler?

A: *Section 18 of 410 IAC 7-22 addresses the penalties that may be assessed for such a violation as it is the responsibility of the certified food handler to provide the certificate, letter, or document for verification of passing the examination. Further, if you adopt the Certification Rule into your local ordinance, it's possible you could use non-compliance with it as a basis to deny a permit.*

Q #27: If a retail food establishment's only food product in question is a non-potentially hazardous food product that they package themselves, but it is not hermetically sealed, are they exempt from the certification requirements?

A: *Yes.*

Q #28: If a retail food establishment's only food products are cotton candy and caramel apples, are they exempt from the certification requirements?

A: *No. These food products, although non-potentially hazardous, are not listed in the exemptions – therefore, they must meet the certification requirements. The exemption dealing with “packaging foods that are not potentially hazardous” really is intended to apply to establishments which merely “package” the food – not those that prepare it AND package it. For instance, if an establishment merely re-packages bulk flour or nuts, they'd be exempt from the certification requirements.*

Q #29: If a retail food establishment's only food product handled in open form is deli meats (that are sliced and packaged), are they exempt from the certification requirements?

A: *No.*

Q #30: Are retail meat markets exempt from the certification requirements?

A: *No. These types of establishments engage in the handling of open, potentially hazardous foods and must comply with the certification requirements.*

Q #31: If a retail food establishment's only food product in question is a drink made by combining a powder and water (such as a protein drink), are they exempt from the certification requirements?

A: *Yes. This meets the intent of the exemption dealing with “beverages”.*

Q #32: Does the certified food handler's original certificate need to be on-site or would a copy of it that is kept at the establishment meet the intent of the rule?

A: *The Rule does not specifically state that the original certificate has to be kept on-site --- but for the sake of preventing the potential for a food handler to provide copies to multiple food establishments --- the original certificate would be preferable (not mandatory).*

Q #33: What is the minimum age for food handler certification?

A: *It doesn't appear there are minimum ages for taking any of the approved exams – however, you would want to check with each exam provider for the specifics on this requirement.*

Q #34: If there is a privately operated retail food establishment inside of a hospital (which is exempt from certification), for example, does the privately owned retail food establishment need to employ a certified food handler?

A: *Yes. If the retail food establishment is not operating under the hospital's license and is licensed and inspected by a local health department (which may be the case in some situations), the retail food establishment will need to comply with the Certification Rule.*

Q #35: What if the certified food handler is not a manager and/or does not have any oversight capacity within the establishment. In other words, if the certified food handler is a line cook and does not hold a managerial position – does this meet the intent of the Rule?

A: *The Rule states that the definition of a food handler could be: “an owner, an operator, a manager, or an employee of a food establishment”. But it further states: “and is responsible for or oversees the storage, preparation, display, or serving of food to the public”. Therefore, the certified food handler must meet*

both criteria and must have some oversight capacity. This would need to be determined and handled on a case-by-case basis to determine the actual duties of that individual – to see if the intent of the Rule is being met.

Q #36: If a retail food establishment's only food product in question is either nachos with chili sauce (vs. only cheese sauce) or pretzels with dips/sauces (vs. plain) – are they exempt from certification requirements?

A: *No...these slight additions to the menu are not covered in the exemptions and would therefore put the establishments over the limit and would require them to meet the certification requirements.*

THIS MAY NOT BE AN ALL-INCLUSIVE LIST AND IT IS SUBJECT TO CHANGE WHEN FURTHER INTERPRETATIONS ARE GIVEN, BUT IT MAY BE HELPFUL

EXEMPT FOOD ITEMS

- Precooked hotdogs and sausage products
- Popcorn or Kettle Corn
- Nachos (with cheese)
- Hot Pretzels (alone)
- Frozen Pizza (precooked)
- “Slushies” as they are considered beverages
- Drinks/Beverages (whether bottled or open)
- Milk Shakes
- Continental Break items such as rolls, coffee, juice, milk, cold cereal, cookies
- Heating products (if it's the only step in a bakery product) such as rolls, toast, pie (if pre-baked)

NON-EXEMPT FOOD ITEMS

- Fudge or chocolates in open form
- Egg Rolls heated on hot dog roller, etc.
- Shaved ice products served with a spoon
- Any foods made from raw dough
- Chili or Cheese Dogs
- Nachos with Chili Sauce
- Ice Cream Cones or Ice Cream in a bowl
- Pretzels with open dips (such as cheese, marinara)
- Cotton Candy (unless pre-packaged elsewhere)

TYPES OF ESTABLISHMENTS THAT ARE EXEMPT

Hospitals (licensed under IC 16-21)
Health Facilities (licensed under IC 16-28)
Community Mental Health Facilities
Assisted Living Facilities
Nursing Homes (and continuing care facilities)